

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) P17115/1020P17115							
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed name _____		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">Application Number 10/728,676</td> <td style="width: 50%; padding: 5px;">Filed</td> </tr> <tr> <td colspan="2" style="padding: 5px;">First Named Inventor Anil K. Kumar</td> </tr> <tr> <td style="padding: 5px;">Art Unit 2446</td> <td style="padding: 5px;">Examiner Scott M. Sciacca</td> </tr> </table>		Application Number 10/728,676	Filed	First Named Inventor Anil K. Kumar		Art Unit 2446	Examiner Scott M. Sciacca
Application Number 10/728,676	Filed								
First Named Inventor Anil K. Kumar									
Art Unit 2446	Examiner Scott M. Sciacca								
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number 56,784 </td> <td style="width: 50%; vertical-align: top;"> <u>/Caroline J. Swindell/</u> Signature <u>Caroline J. Swindell</u> Typed or printed name <u>724-933-5529</u> Telephone number <u>October 7, 2010</u> Date </td> </tr> </table> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p>				<input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number 56,784	<u>/Caroline J. Swindell/</u> Signature <u>Caroline J. Swindell</u> Typed or printed name <u>724-933-5529</u> Telephone number <u>October 7, 2010</u> Date				
<input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number 56,784	<u>/Caroline J. Swindell/</u> Signature <u>Caroline J. Swindell</u> Typed or printed name <u>724-933-5529</u> Telephone number <u>October 7, 2010</u> Date								
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.									
<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.									

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/728,676 Confirmation No.: 9059
Applicant : Anil K. Kumar
Filed : December 4, 2003
TC/A.U. : 2446
Examiner : Scott M. Sciacca

Docket No. : P17115/1020P17115
Customer No. : 57035

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

In response to the Office Action mailed on June 10, 2010, Applicant requests a pre-appeal review conference in light of the following remarks. This request is filed concurrently with a Notice of Appeal.

This response is accompanied by a Petition, as well as the appropriate fee, to obtain a one-month extension of the period for responding to the Office action, thereby moving the deadline for response from September 10, 2010 to October 10, 2010.

REMARKS

Claims 24-30 stand rejected under 35 U.S.C. § 101 because the claimed invention is indicated to be directed to non-statutory subject matter. Applicant is willing to amend the preamble to recite a non-transitory medium.

Claims 1-22, 24-30 are pending in this application. Claims 1-22, 24-30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over United States Patent No. 7,136,392 to Wentink (hereinafter "Wentink") in view of United States Patent No.

7,301,965 to Cimini Jr. et al. (hereinafter "Cimini") and ") and United States Patent No. 6,804,222 to Lin et al. (hereinafter "Lin"). Applicant respectfully submits that the rejection is improper. The references, alone, or in combination, fail to teach at least one element of the independent claims.

Claim 1 recites: A method comprising: in response, at least in part, to a request for a service from a system, determining a quality of service to assign to an application to be executed by the system to provide the service, the quality of service based, at least in part, on one or more service characteristics of the application; mapping said one or more service characteristics to a class of service database, wherein a class of service corresponds to one or more service characteristics to which the application service characteristics can be mapped to determine the application's class of service; allocating one or more resources to the application, the one or more resources being based, at least in part, on the quality of service and a media access control service data unit (MSDU) size; determining a size of packets to be used for transmitting data associated with the service based on said quality of service; and servicing the application in a bearer plane.

The references, alone or in combination, fail to teach or fairly suggest, at least, mapping said one or more service characteristics to a class of service database wherein a class of service corresponds to one or more service characteristics to which the application service characteristics can be mapped to determine the application's class of service. The Action therefore, fails to present a prima facie case of obviousness.

Specifically, the Action asserts that Wentink and Cimini, in combination, teach or suggest all of the elements of claim 1, except for: "mapping said one or more service characteristics to a class of service database;" and "servicing the application in the bearer plane." The Action relies on Lin, in combination with Wentink and Cimini to teach these elements of claim 1.

In fact, Lin does not teach mapping said one or more service characteristics to a class of service database, *wherein a class of service corresponds to one or more service characteristics to which the application service characteristics can be mapped to determine the application's class of service*. Instead, Lin teaches a frame classification table that lists, in each table entry: search priority, a unique virtual stream ID (VSID), and

classifier parameters for the unique VSID. Lin, Fig. 5. A virtual stream, in Lin, is independent of application, and merely "amounts to an identifiable, ordered sequence of data frames for transport within a BSS using a specified set of QoS parameter values." Lin, col. 10, lines 46-48. When a frame is received, the QoS Management Entity of Lin uses information in the received frame to search for a matching classifier parameter in the classification table, and searches in descending priority order. When a matching entry is found, the virtual stream associated with the VSID is used to transport the frame. Lin, col. 13, lines 51-60. Lin does not map service characteristics of an *application* to a class of service in a database.

In contrast, in claim 1, one or more service characteristics (of an application) may be mapped to a class of service database. The one or more service characteristics may be associated with a class of service. Each application may provide a description of its requirements in terms of its one or more service characteristics. The one or more service characteristics may be mapped to a class of service database, for example, which may include a plurality of classes of service, where each class of service corresponds to one or more service characteristics to which the application service characteristics can be mapped to determine the application's class of service. Specification, paragraph 0030. Service characteristics may include, for example, burstiness, bandwidth, packet loss, and delay. Specification, paragraphs 0037-0041. QoS parameters, in contrast, typically include such items as arbitration inter frame space (AIFS), Contention Window (CW) minimum and/or maximum, and a persistence factor. Specification, FIG. 6, and paragraphs 0045-0048.

Lin, therefore, does not teach this element of claim 1, and the combination of Lin with Wentink and Cimini also fails to teach or fairly suggest the claim. Applicant respectfully requests that the rejection be withdrawn and the claim allowed.

Claims 2-9 are dependent from claim 1, and are allowable at least for being dependent on an allowable claim.

Independent claims 10, 17 and 24 are amended similarly to claim 1, and are allowable for at least the reasons given above regarding claim 1.

Claims 11-16, 18-22, and 25-30 depend from claims 10, 17 and 24, respectively, and are allowable at least for being dependent on an allowable claim.

Because the references, alone or in combination, fail to teach or fairly suggest, at least, servicing the application in a bearer plane, the Action fails to establish a prima facie case of obviousness regarding claim 1. Reconsideration and withdrawal of the rejection is respectfully requested.

Independent claims 10, 17, and 24 recite similar elements as those discussed above regarding claim 1 and are allowable for at least the reasons provided for claim 1.

Claims 2-9, 11-16, 18-22, and 25-30 depend from allowable independent claims, and are allowable at least for being dependent from allowable claims.

Conclusion

It is believed that claims 1-22, 24-30 are in allowable form. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

Applicant does not otherwise concede, however, the correctness of the rejection set forth in the Office Action with respect to any of the features of the independent claims and dependent claims. Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the claims from the cited reference, based on additional features contained in the independent claims or dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

The Examiner is invited to contact the undersigned at 724-933-9344 to discuss any matter concerning this application.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17 to the credit card in the previously filed credit card authorization form.

Respectfully submitted,

KACVINSKY LLC

/Caroline J. Swindell/

Caroline J. Swindell, Reg. No. 56,784
Under 37 CFR 1.34(a)

Dated: October 7, 2010

KACVINSKY DAISAK PLLC
4500 Brooktree Road, Suite 302
Wexford, PA 15090
(724) 933-5529